



Tax Executives Institute, Inc.

1200 G Street, N.W., Suite 300
Washington, D.C. 20005-3814
Telephone: 202.638-5601
Fax: 202.638-5607
Web: www.tei.org

2006-2007 OFFICERS

President

DAVID L. BERNARD
Kimberly-Clark Corporation
Neenah, Wisconsin

Senior Vice President

ROBERT J. McDONOUGH
Polaroid Corporation
Waltham, Massachusetts

Secretary

VINCENT ALICANDRI
Hydro One Networks Inc.
Toronto, Ontario

Treasurer

NEIL D. TRAUBENBERG
Sun Microsystems, Inc.
Louisville, Colorado

Vice President-Region I

MARTINA KRUMMEN
Air Canada
Dorval, Quebec

Vice President-Region II

RAYMOND J. GWYDIR
The Estee Lauder Companies, Inc.
Melville, New York

Vice President-Region III

WAYNE A. CABLE
Hubbell Inc.
Orange, Connecticut

Vice President-Region IV

MICHAEL J. MCGOLDRICK
Sunoco Inc.
Philadelphia, Pennsylvania

Vice President-Region V

SANDRA K. LAUX
Ralph Corp Holdings, Inc.
St. Louis, Missouri

Vice President-Region VI

MICHAEL R. ANNIS
Burlington Northern Santa Fe
Railway
Fort Worth, Texas

Vice President-Region VII

SHYAMS. DUA
HMS Host Corporation
Bethesda, Maryland

Vice President-Region VIII

WILLIAM C. BARRETT
Applied Materials, Inc.
Santa Clara, California

Vice President-Region IX

WILLIAM E. RAMIREZ
Altria Corporate Services, Inc.
Hong Kong

Executive Director

TIMOTHY J. MCCORMALLY

Chief Tax Counsel

ELI J. DICKER

General Counsel

MARY L. FAHEY

Shirley Sicilian

General Counsel

Multistate Tax Commission

444 North Capitol Street, N.W., Suite 425
Washington, D.C. 20001

September 7, 2006

Re: Uniformity Proposal – Compilation of State Filing Data Statute

Dear Ms. Sicilian:

On behalf of Tax Executives Institute, I am pleased to provide comments on the Multistate Tax Commission's revised Draft Model Uniform Statute on Reportable Transactions and State Filing Positions ("Model Statute"). The original statutory proposal, which was the subject of substantial public comment, including those from TEI, was revised to require taxpayers to report a "compilation of state return data" to each state. For the reasons set out below, the revised proposal remains flawed, reflecting not a meaningful step toward uniformity among the states but rather the ill-advised pursuit of an excessive information gathering policy that would circumvent existing mechanisms to obtain taxpayer information and possibly spawn legal challenges to the MTC's and States' authority. Equally important, the proposal would impose substantial costs and compliance burdens on taxpayers without any legitimate benefit to the states. We therefore urge the MTC and its members to set aside the proposal and commit themselves to working with the Institute and other business representatives to develop a more balanced approach to information gathering.

I. Background

Tax Executives Institute is the preeminent association of business tax executives in North America. Our more than 6,000 members represent 2,800 of the leading corporations in the United States, Canada, Europe, and Asia. TEI represents a broad cross-section of the business community, and is dedicated to developing and effectively implementing sound tax policy, to promoting the uniform and equitable enforcement of the tax laws, and to reducing the cost and burden of administration and compliance to the benefit

of taxpayers and government alike. As a professional association, TEI is firmly committed to maintaining a tax system that works — one that is administrable and with which taxpayers can comply in a cost-efficient manner.

Members of TEI are responsible for managing the tax affairs of their companies and must contend daily with the provisions of the tax law relating to the operation of business enterprises. We believe that the diversity and professional training of our members — combined with our six-decade record of working cooperatively with tax authorities — enable us to bring a balanced and practical perspective to the issues raised by the Multistate Tax Commission's Model Statute.

II. The Development of the Model Statute

At its May 11, 2006, meeting, the MTC's Executive Committee directed its staff to consult with interested parties about possible amendments to the Model Statute. TEI welcomed the opportunity to work with the MTC staff in improving the Model Statute. Discussions throughout the summer led the Institute and other business representatives to better understand the MTC's policy objectives and, we trust, gave the MTC important insight into the legal, cost, and compliance issues confronting the business community in respect of the Model Statute.

While TEI believes that open, candid dialogue remains the best means for government and industry to identify and advance their common interests and while we have worked professionally and in good faith to develop a consensus, the Institute cannot endorse the Model Statute in its current form. From the outset, we have voiced significant reservations about the proposal, and thus are disappointed that our constructive engagement in the consultative process has (somewhat inconsistently) been construed both as support for the Model Statute and as little more than a facade. For the reasons expressed below, TEI believes a fundamental rebalancing of the MTC's objectives — and a concomitant revision of the proposal — is necessary before the Model Statute can attract business support.

III. The Model Statute Remains Flawed

A. The MTC Has Not Established the Need for the Model Statute

The Model Statute would require that taxpayers compile substantial state tax return information to be reported to each state in which the taxpayer files a tax return. The MTC contends that this information is necessary to promote greater transparency. TEI respectfully disagrees. The MTC fails to acknowledge the vast amount of tax return data already available to the states, including federal Forms M-3, and 5471 as well as tax return information available through federal and state exchange of information agreements.

Moreover, the MTC has not yet established the need or relevance of this information in light of the substantial variance among the states in defining income and factors in the apportionment formula as a result of case law, administrative rules, audit policy, etc. For example, many MTC member states have diverged from the definition of business income in the Uniform Division of Income for Tax Purposes Act (UDITPA) in order to provide that, in their jurisdictions, the definition includes transactional and functional tests. Similarly, some, but not all, member states have revised

their definition of “sales” for determining the sales factor apportionment (e.g., inclusion of net versus gross receipts from treasury functions). Other member states have developed various special industry apportionment formulae for apportioning income from specific industries (e.g., broadcast industry). And some, but not all, member states have developed various “special” apportionment rules, including throwback rules that can materially affect apportionment factor calculations. In other words, every state has materially altered UDITPA and some states have abandoned (or are considering abandoning) UDITPA altogether. In this environment, it is unclear what the benefit of the Model Statute would be. For example, how would Texas or Michigan benefit from an understanding of how a company reported business and non-business income in other states? Similarly, how would California benefit from an understanding of how a service provider sources receipts for Minnesota apportionment purposes when California uses a cost-of-performance methodology while Minnesota employs a market-based method?

The MTC has minimized how the lack of uniformity undermines the utility — and propriety — of the Model Statute. Undergirding the Model Statute is apparently the assumption that the net effect of the patchwork of state tax laws will be to tax 100 percent of a taxpayer’s income. That assumption, however, proves too much. Indeed, the likelihood that a 50-state taxpayer that complies with each state’s UDITPA-altered statute will pay tax on 100 percent of its income borders on the impossible because of policy decisions made by the states. Rather, it is far more likely that this hypothetical 50-state taxpayer will pay tax on more than, or less than, 100 percent of its income. While the MTC should appropriately work to eliminate or ameliorate multiple taxation where it occurs owing to discontinuities in the different states’ laws, the MTC should not seek to impose its judgment on states whose legislatures have chosen a different path.

In summary, because (1) it is unclear how the information required by the Model Statute will inform the actions of the states or otherwise advance the MTC’s uniformity goal, and (2) the states currently possess such information and can share it through exchange of information agreements, the proposal should be set aside.

B. The MTC Ignores the Burdens that the Model Statute Would Impose

Many Institute members work at tax departments that are responsible for filing tax returns on behalf of hundreds of legal entities, and they know first hand the administrative burden required in implementing and complying with new reporting requirements. During several conference calls on the Model Statute, TEI shared with the MTC staff and state auditors substantial information on the voluminous data that the proposal would require to be compiled and submitted under the proposal. Simply put, compiling the reportable information would require substantial effort, but during our discussions, it did not seem that the MTC had worked to identify (and attempt to minimize) how much effort. Specifically, proponents of the proposal had not endeavored to complete a pro forma spreadsheet/compilation to: (a) understand the complexity it would contain, (b) determine whether state tax auditors would find the document or data useful, and (c) understand existing or prospective more efficient alternatives.

When pressed on the availability of technology or other tools to alleviate the expected compliance burdens that will be generated by the Model Statute, the MTC staff alluded to the

existence of a single (unidentified) vendor that might be able to facilitate compliance with the Model Statute's requirements. Because the vendor was not identified, its proposed solution could not be vetted. We are not aware of any other discussions between the MTC and other vendors.

It has been suggested that taxpayers can comply with the Model Statute's requirements by providing copies of every tax return filed with every state and that this alternative will ameliorate any compliance concerns. TEI disagrees. While making 50 copies of each state tax return sounds like a manageable task, such a solution raises a host of issues and would itself come at substantial cost. For instance, once a state taxpayer settles a state income tax audit affecting various state tax calculations (*e.g.*, business income, non-business income, apportionment data, tax attribute calculations and utilization, etc.) will each of these changes be required to report to each other state? In its current form, the Model Statute requires ongoing reporting, thereby adding to the burden already imposed in respect of federal audit adjustments. Multiplying this already burdensome requirement by 50 is not a practical solution. More to the point, given the lack of uniformity among the states, providing the states with all the returns filed in other jurisdictions would either spawn innumerable "wild goose chases" or, alternatively, constitute a figurative haystack containing, at most, a modest number of needles.

IV. Conclusion

Tax Executives Institute believes there are benefits to be derived from working collaboratively to identify and solve key issues of state tax administration. We therefore strongly urge the MTC and its members to set aside the Model Statute and resume its discussions with the business community.

* * *

TEI appreciates the opportunity to comment on the Multistate Tax Commission's uniformity proposal. If you need additional information, please contact Victor Ledesma, chair of TEI's State and Local Tax Committee, at 920.721.4034; or Eli J. Dicker, TEI's Chief Tax Counsel at (202) 638-5601.

Respectfully submitted,

TAX EXECUTIVES INSTITUTE, INC.

By:



David L. Bernard
International President